IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Crl.MC.No. 2549 of 2007()

CP.185/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

.....

PETITIONER: 3RD ACCUSED

RAJESH, S/O.BALAKRISHNAN,
PASHNATH HOUSE, SOLVENT ROAD, CHETTIPARAMBU,
IRINJALAKUDA.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS: COMPLAINANT

THE SUB INSPECTOR OF POLICE,
HOSDURG POLICE STATION REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

Crl.M.C. No.2549 Of 2007

= = = = = = = = = = = = = = =

Dated this the 23rd day of August, 2007

ORDER

The petitioner faces indictment in a prosecution under the provisions of the Kerala Abkari Act. According to the petitioner the only allegation against him is that his vehicle was used for commission of offence. According to the petitioner, he was not the registered owner of the vehicle on the relevant date and he had transferred to the 1st accused. The petitioner was not arrested at the crime stage. Investigation is complete. Final report has already been filed. Cognizance has been taken and the case is registered. The petitioner did not appear before the learned Magistrate. Consequent to non-appearance of the petitioner, the learned Magistrate has issued coercive processes against the petitioner. Such coercive processes are chasing the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The absence of the petitioner earlier was on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate and cooperate for the early disposal of the case, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The learned Magistrate cannot abdict his responsibility under Section 439 Cr.P.C. merely because

the offence is one triable at Sessions. He further prays that appropriate directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons. The petition must be considered in the light of the decision in **Sukumari v. State of Kerala (2001 (1) KLT 22)**. also.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE